

SENATE BILL No. 274

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-89.

Synopsis: Sewage disposal service in rural areas. Provides that before the utility regulatory commission may issue a certificate of territorial authority to a sewage disposal company (company) that provides or will provide sewage disposal service to less than 500 customers, the commission must determine that the company is the most appropriate provider of sewage disposal services for the rural area covered by the certificate of territorial authority. Provides that the issuance of a certificate of territorial authority to a company is subject to review and approval by the department of environmental management.

Effective: July 1, 2007.

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January 11, 2007, read first time and referred to Committee on Utilities & Regulatory Affairs.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 274

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-89 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 89. (a) As used in this section,
3 unless the context otherwise requires, the following terms have the
4 following meanings:

5 (1) "Sewage disposal service" means any public utility service
6 whereby liquid and solid waste, sewage, night soil, and industrial
7 waste of any single territorial area is collected, treated, purified,
8 and disposed of in a sanitary manner, and includes all sewage
9 treatment plant or plants, main sewers, submain sewers, local and
10 lateral sewers, intercepting sewers, outfall sewers, force mains,
11 pumping stations, ejector stations, and all other equipment and
12 appurtenances necessary or useful and convenient for the
13 rendition of such service.

14 (2) "Sewage disposal company" means any natural person, firm,
15 association, corporation, or partnership owning, leasing, or
16 operating any sewage disposal service within the rural areas of
17 this state, and all provisions of this chapter pertaining to a public



utility shall apply with equal force and effect to a sewage disposal company, except insofar as said provisions may be inconsistent with specific provisions of this section.

(3) "Rural area" means territory lying within the state of Indiana and lying outside the corporate limits of a municipality.

(4) "Certificate of territorial authority" means a certificate of convenience and necessity issued by the commission pursuant to this section, which said certificate shall be deemed an indeterminate permit, unless expressly conditioned otherwise by the commission when issued.

(5) "Notice of hearing" means notice of the time, place, and purpose of a hearing, given by publication in at least one (1) newspaper of general circulation in each of the counties in which the particular sewage disposal company operates or proposes to operate and given also in writing by United States registered mail:

(A) to each other sewage disposal company operating in territory contiguous to the territory in which the particular sewage disposal company operates or proposes to operate;

(B) to each municipality in territory contiguous and nearest to the territory in which the particular sewage disposal company operates or proposes to operate; and

(C) to such other persons or entities which the commission may from time to time require by its rules and forms;

all such notices shall be so mailed as to be received by the recipients at least ten (10) days prior to any hearing, or as otherwise required by the commission.

(6) "Package sewage disposal company" means a sewage disposal company that provides or will provide sewage disposal service to less than five hundred (500) customers.

(b) It is hereby declared to be in the public interest to provide for the orderly development and rendering of sewage disposal service in rural areas within the state of Indiana, and such public interest makes it necessary and desirable that to the extent provided herein the holding of a certificate of territorial authority should be required as a condition precedent to the rendering of such service, and that such operation be under the control, regulation, and supervision of the commission, and such sewage disposal companies shall not be subject to regulation by any municipality or county government or metropolitan regulatory body, or any branch or subdivisions thereof or substitute therefor in the form of special service districts, with the ~~exception~~ **exceptions** that:

said

(1) a sewage disposal company shall be subject to the

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comprehensive plan, zoning, and subdivision requirements and regulations of the governmental units having jurisdiction in the area; **and**

(2) a package sewage disposal company is subject to the requirements set forth in subsection (m).

However, all functions, powers, and duties of the state department of health and the water pollution control board shall remain unaffected by this section.

(c) No sewage disposal company shall commence the rendering of sewage disposal service in any rural area in the state of Indiana in which it is not actually rendering sewage disposal service, without first obtaining from the commission a certificate of territorial authority authorizing such sewage disposal service, finding that public convenience and necessity require such sewage disposal service within such rural area by such sewage disposal company, and defining and limiting specifically the rural area covered thereby. No sewage disposal company hereby required to hold such a certificate shall render any additional sewage disposal service within such rural area to any extent greater than that authorized by such certificate or shall continue to render sewage disposal service within such rural area if and after such certificate of territorial authority has been revoked or transferred as in this section provided, unless in such order of revocation or transfer the commission shall require continued service until a new sewage disposal company or municipality actually takes over such service. The commission shall not have the power to require extension of such service by any sewage disposal company into any additional territory than that defined and limited in such a certificate without the consent of such sewage disposal company.

(d) Whenever any sewage disposal company proposes to commence the rendering of sewage disposal service in any rural area, it shall file with the commission a verified application for a certificate of territorial authority to cover the proposed service. The commission shall by rule prescribe the form of the application and the information to be contained therein, **including information necessary to make a determination under subsection (m)**, and such application by any such company shall conform to such prescribed form. The commission shall set the matter for hearing and notice of such hearing shall be given to the parties and in the manner defined in this section. Any city may, and upon petition to the commission shall, be made a party to any service proposal if its territorial limits lie within five (5) miles of the area to be serviced under this section. **A verified application submitted by a package sewage disposal company must include a**

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resolution in support of the verified application adopted by the board of county commissioners of the county in which the package sewage disposal company seeks to provide sewage disposal services.

(e) If, after notice of hearing and hearing on any application for a certificate of territorial authority, the commission shall find from the evidence introduced at such hearing, including any evidence which the commission shall have caused to be introduced as a result of any investigation which it may have made into the matter, that the applicant has proved:

(1) lawful power and authority to apply for said certificate and to operate said proposed service;

(2) financial ability to install, commence, and maintain said proposed service; and

(3) public convenience and necessity require the rendering of the proposed service in the proposed rural area by this particular sewage disposal company; however, in the event the service is proposed for a proposed rural real estate addition, division, or development, or any part thereof, the reasonably expected sewage disposal service requirements of the anticipated residents may be found to constitute such public convenience and necessity;

then the certificate of territorial authority, defining and limiting the rural area to be covered thereby, shall be granted to the applicant, subject to such terms, restrictions, limitations, and conditions, including but not limited to a reasonable time in which to commence operations, as the commission shall determine to be necessary and desirable in the public interest.

(f) In cases of applications filed by two (2) or more sewage disposal companies seeking the issuance of a certificate of territorial authority for the same area or areas or any conflicting portions thereof, the commission may either consider such applications separately or by consolidation of two (2) or more or all within a single hearing at its discretion and shall have the power to issue its certificate after notice of hearing and hearing to any single qualified sewage disposal company for a particular rural area, or, in the event that the commission determines and finds that two (2) or more or all applicants seeking the same area or areas or any conflicting portions thereof are both or all qualified, then the commission shall have the power to determine which is the better or best qualified, or whether the same area or areas or any conflicting portions thereof shall be divided between or among such qualified applicants. However, in no event shall such area or areas or portions thereof be greater than that for which the particular applicant applied, unless such sewage disposal company shall consent

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1 and agree in writing to such modification of its application and the
2 issuance of such modified certificate.

3 (g) After the issuance of such certificate, no other sewage disposal
4 company shall render sewage disposal service in the area or areas so
5 determined and so defined in any certificate of territorial authority
6 issued by the commission, except after notice of hearing and hearing,
7 and the determination and finding by the commission that public
8 convenience and necessity require that sewage disposal service in said
9 same area or areas be also rendered or offered by an additional or
10 another company, and the issuance of a certificate duly granted by the
11 commission as provided in this section.

12 (h) A sewage disposal company shall be required to furnish
13 reasonable adequate sewage disposal services and facilities for which
14 said service and facilities it shall be entitled to charge reasonable,
15 nondiscriminatory rates, subject to the jurisdiction of the commission
16 for the purpose of fixing said rates to be charged to patrons of such
17 sewage disposal company for sewage disposal service, and for such
18 purpose the commission is given jurisdiction to proceed in the same
19 manner and with like power as is provided by this chapter in the case
20 of public utilities.

21 (i) To encourage the installation of sewage treatment plants, and
22 sewers, mains, stations, and all other equipment and appurtenances for
23 rendering sewage disposal service in rural areas in close proximity to
24 municipalities, and to ensure that a sewage disposal company which
25 had made such installation in such area can recover the cost of its
26 investment, in the event that the area or areas or any part thereof
27 included within the territory granted under a certificate of territorial
28 authority shall be annexed by any municipality at any time within
29 twelve (12) years from the date that such certificate was granted, a
30 sewage disposal company operating under such certificate shall
31 continue to operate under such certificate of territorial authority,
32 subject to the exclusive jurisdiction and regulation of the commission,
33 for the unexpired portion of such period of twelve (12) years from the
34 date of granting such certificate, or, in the case of a determinate permit
35 specifying a term shorter than twelve (12) years, then for the unexpired
36 portion of such lesser period as specified by such permit from the date
37 of granting such permit. However, the foregoing provisions in regard
38 to continued operation within the corporate limits of a municipality
39 after annexation shall not affect the right of the sewage disposal
40 company to cease its operation of providing sewage disposal service
41 within such annexed territory prior to the termination of said twelve
42 (12) year or lesser determinate permit period, upon thirty (30) days

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1 written notice to the commission, the municipality, and all patrons.

2 (j) Upon approval by the commission given after notice of hearing
3 and hearing, but not otherwise, any certificate of territorial authority
4 may:

5 (1) be sold, assigned, leased, or transferred by the holder thereof
6 to any sewage disposal company to which a territorial certificate
7 might be lawfully issued; or

8 (2) be included in the property and rights encumbered under any
9 indenture of mortgage or deed of trust of such holder;

10 or any sewage treatment plant or plants, sewers, mains, stations, and
11 equipment and appurtenances for the rendering of sewage disposal
12 service, or any part thereof, may be sold, assigned, leased, or
13 transferred by the holder thereof to any municipality if these assets lie
14 within an area which shall have been annexed by such municipality or
15 lie within the given radius of miles from the corporate limits of such
16 municipality into which it is authorized to render such services, if such
17 municipality is prepared to render a comparable sewage disposal
18 service without loss of continuity of service, and if the terms of such
19 sale, assignment, lease, or transfer are reasonable. However, once the
20 commission has given its approval to such transaction and the
21 transaction itself is actually consummated, the commission shall have
22 no control over the sewage disposal service henceforth rendered by
23 such municipality as a municipally owned utility (as defined in this
24 chapter).

25 (k) Any certificate of territorial authority may, after notice of
26 hearing and hearing, be revoked by the commission, in whole or in
27 part, for the failure of the holder thereof to furnish reasonably adequate
28 sewage disposal service within the area or areas determined and
29 defined in such certificate of territorial authority, or for the failure of
30 the holder thereof to comply with any applicable order or rule
31 prescribed by the commission in the exercise of its powers under this
32 chapter, or for failure to comply with any term, condition, or limitation
33 of such certificate of territorial authority.

34 (l) After the commission revokes any certificate of territorial
35 authority under subsection (k) or after the county board of health
36 determines the existence of a serious health problem related to the
37 sewage disposal facility, the county commissioners of the county in
38 which the sewage disposal facility is located may acquire the facility,
39 subject to the approval of the acquisition by the county council, except
40 that the county commissioners may not acquire any facility already
41 acquired by any city or town. The county commissioners shall acquire
42 the sewage disposal facility by:

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1 (1) gift, grant, purchase, or condemnation that is funded in the
2 same manner that cities and towns fund sewage treatment
3 acquisitions under IC 36-9; or

4 (2) a lease arrangement that is funded in the same manner that
5 cities and towns fund leases of sewage disposal facilities under
6 IC 36-9.

7 After acquisition, the county commissioners shall repair, operate, and
8 maintain the sewage disposal facility and charge user fees for these
9 services.

10 **(m) Before the commission may issue a certificate of territorial**
11 **authority to a package sewage disposal company, the commission**
12 **must determine that the package sewage disposal company is the**
13 **most appropriate provider of sewage disposal services for the rural**
14 **area covered by the certificate of territorial authority. The**
15 **issuance of a certificate of territorial authority to a package sewage**
16 **disposal company is subject to review and approval by the**
17 **department of environmental management.**

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